

ESTTA Tracking number: **ESTTA500170**Filing date: **10/16/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Monticello Drug Company		
Entity	Corporation	Citizenship	Florida
Address	1604 Stockton St. Jacksonville, FL 32204 UNITED STATES		

Attorney information	Alicia Brown Oliver Chambliss, Bahner & Stophel, P.C. 1000 Tallan Building, Two Union Square Chattanooga, TN 37402 UNITED STATES aoliver@cbslawfirm.com Phone:423-757-0206
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Registration Subject to Cancellation

Registration No	4191036	Registration date	08/14/2012
Registrant	Alvogen IP Co S.a.r.l. rue Erasme Luxembourg, L-2082 LUXEMBOURG		

Goods/Services Subject to Cancellation

Class 040. First Use: 2001/07/00 First Use In Commerce: 2001/07/00
All goods and services in the class are cancelled, namely: Manufacturing services for others in the field of pharmaceuticals

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1732425	Application Date	12/04/1991
Registration Date	11/17/1992	Foreign Priority Date	NONE
Word Mark	NORWICH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1927/04/12 First Use In Commerce: 1927/00/00		

	aspirin
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Attachments	Cancellation_Petition_Norwich.pdf (4 pages)(56911 bytes) NORWICH Exhibits.pdf (61 pages)(10001995 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/aliciabrownoliver/
Name	Alicia Brown Oliver
Date	10/16/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONTICELLO DRUG COMPANY	:	
	:	
Petitioner,	:	
	:	U.S. Registration No., 4,191,036
v.	:	Cancellation No. _____
	:	
ALVOGEN IP CO S.A.R.L., LLC	:	
	:	
Registrant.	:	
	:	

PETITION FOR PARTIAL CANCELLATION

Petitioner, Monticello Drug Company (“Monticello”), a Florida Corporation, with an address of 1604 Stockton St., Jacksonville, FL 32204, believes that it is and will be damaged by U.S. Registration No., 4,191,036 for the mark NORWICH in International Class 40, owned by Alvogen IP Co S.A.R.L., LLC (“Alvogen”), with an address of Rue Erasme Luxembourg, Luxembourg L-2082. As grounds for partial cancellation, Monticello states as follows:

1. Monticello is the owner of U.S. Registration No. 1,732,425 for the mark NORWICH for use in connection with the pharmaceutical product “aspirin” in Class 5. Exhibit A.
2. Monticello and its predecessor have continuously used the mark NORWICH in commerce on and in connection with “aspirin” for many years and since long prior to any date of first use upon which Alvogen can rely.
3. Alvogen is the owner of U.S. Registration No., 4,191,036 for the mark NORWICH for “manufacturing services for others in the field of pharmaceuticals” in International Class 40. Exhibit B.

4. Alvogen applied to register its NORWICH mark on November 24, 2009 in Classes 40 and 42. The Examining Attorney issued an Office Action Letter rejecting Alvogen's application on the basis of Section 2(d) likelihood of confusion with Monticello's NORWICH mark. Exhibit C.
5. Alvogen responded to the Office Action arguing: the goods and services are not commercially related; the goods and services are sold in different channels of trade; and the goods and services are sold to different prospective customers. Exhibit D.
6. The Examining Attorney subsequently withdrew the Section 2(d) refusal. The mark was registered on August 14, 2012. See Exhibit B.
7. The services recited in Alvogen's NORWICH registration are commercially related to the goods offered by Monticello under its NORWICH mark.
8. Alvogen's NORWICH mark is identical Monticello's previously registered NORWICH mark.
9. When applied to the services recited in Class 40, Alvogen's NORWICH mark is likely to cause confusion, mistake and/or deception within the meaning of Section 2(d) of the Trademark Act.
10. The continued registration of NORWICH (U.S. Registration No. 4,191,036) for use in connection with Alvogen's services in International Class 40 is inconsistent with Monticello's rights in its NORWICH mark and will cause damage to Monticello.

WHEREFORE, Monticello prays that International Class 40 of U.S. Registration No. 4,191,036 be cancelled and that this Petition for Partial Cancellation be sustained in favor of Monticello.

The filing fee of this Cancellation in the amount of \$300.00 has been paid electronically.

Respectfully submitted,
CHAMBLISS, BAHNER & STOPHEL, P.C.

By: 

Alicia Brown Oliver
David J. Hill
1000 Tallan Building
Two Union Square
Chattanooga, Tennessee 37402
(423) 756-3000

Attorneys for Monticello Drug Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Cancellation Petition is being served by U.S. Mail to:

Alvogen IP Co S.A.R.L., LLC
rue Erasme
Luxembourg L-2082
LUXEMBOURG

and

GREGG A. PARADISE
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

Alicia Brown Oliver
Date of Signature: October 16, 2012

Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office **Reg. No. 1,732,425**
Registered Nov. 17, 1992

TRADEMARK
PRINCIPAL REGISTER

NORWICH

NORWICH EATON PHARMACEUTICALS, INC.
(OHIO CORPORATION)
17 EATON AVENUE
NORWICH, NY 13815

FIRST USE 4-12-1927; IN COMMERCE
0-0-1927.
SEC. 2(F).

SER. NO. 74-229,096, FILED 12-4-1991.

FOR: ASPIRIN, IN CLASS 5 (U.S. CL. 18).

JULIA A. HARDY, EXAMINING ATTORNEY



STATUS DOCUMENTS

[Back to Search](#)

Print

Generated on: This page was generated by TSDR on 2012-10-16 8:35:16 EST**Mark:** NORWICH**US Serial Number:** 74229096**US Registration Number:** 1732425**Register:** Principal**Mark Type:** Trademark**Status:** The registration has been renewed.**Status Date:** Oct. 04, 2012**Publication Date:** Aug. 25, 1992**Application Filing Date:** Dec. 04, 1991**Registration Date:** Nov. 17, 1992**Mark Information**

expand all

Goods and Services**Basis Information (Case Level)****Current Owner(s) Information****Attorney/Correspondence Information****Prosecution History****Maintenance Filings or Post Registration Information****TM Staff and Location Information****Assignment Abstract of Title Information**

Conveyance Filter

United States of America
United States Patent and Trademark Office

NORWICH

Reg. No. 4,191,036

Registered Aug. 14, 2012

Int. Cls.: 40 and 42

SERVICE MARK

PRINCIPAL REGISTER

ALVOGEN IP CO S.A.R.L. (LUXEMBOURG LIMITED LIABILITY COMPANY)
RUE ERASME
LUXEMBOURG, LUXEMBOURG L-2082

FOR: MANUFACTURING SERVICES FOR OTHERS IN THE FIELD OF PHARMACEUTICALS,
IN CLASS 40 (U.S. CLS. 100, 103 AND 106).

FIRST USE 7-0-2001; IN COMMERCE 7-0-2001.

FOR: PHARMACEUTICAL RESEARCH SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-0-2001; IN COMMERCE 7-0-2001.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-879,560, FILED 11-24-2009.

APRIL ROACH, EXAMINING ATTORNEY



David J. Kypos

Director of the United States Patent and Trademark Office



STATUS DOCUMENTS

[Back to Search](#)[Print](#)

Generated on: This page was generated by TSDR on 2012-10-16 8:35:40 EST

Mark: NORWICH

NORWICH

US Serial Number: 77879560

Application Filing Date: Nov. 24, 2009

US Registration Number: 4191036

Registration Date: Aug. 14, 2012

Register: Principal

Mark Type: Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Aug. 14, 2012

Publication Date: Nov. 02, 2010

Notice of Allowance Date: Dec. 28, 2010

Mark Information

[expand all](#)

Related Properties Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Owner Name: Alvogen IP Co S.a.r.l.

Owner Address: rue Erasme
Luxembourg L-2082
LUXEMBOURG

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where LUXEMBOURG
Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: GREGG A. PARADISE

Docket Number: ALVOGE 10.0-

Correspondent

Correspondent GREGG A. PARADISE

Name/Address: LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP
600 SOUTH AVE W STE 2
WESTFIELD, NEW JERSEY 07090-1497
UNITED STATES

Phone: (908) 654-5000

Fax: (908) 654-7866

Correspondent e-mail: trademarkadmin@dlkm.comCorrespondent e-mail No
Authorized:

Domestic Representative

Domestic Representative GREGG A. PARADISE
Name:

Fax: (908) 654-7866

Phone: (908) 654-5000

Domestic Representative e- trademarkadmin@dlkm.com
mail:Domestic Representative e- Yes
mail Authorized:

Prosecution History

TM Staff and Location Information

Assignment Abstract of Title Information

To: Alvogen IP Co S.a.r.l. (trademarkadmin@ldlkm.com)

Subject: U.S. TRADEMARK APPLICATION NO. 77879560 - NORWICH -
ALVOGE 10.0-

Sent: 3/2/2010 10:51:41 AM

Sent As: ECOM115@USPTO.GOV

Attachments: [Attachment - 1](#)
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/879560

MARK: NORWICH

77879560

CORRESPONDENT ADDRESS:

GREGG A. PARADISE
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & ME
600 SOUTH AVE W STE 2
WESTFIELD, NJ 07090-1497

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Alvogen IP Co S.a.r.l.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

ALVOGE 10.0-

CORRESPONDENT E-MAIL ADDRESS:

trademarkadmin@ldlkm.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 3/2/2010

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Trademark Act Section 2(d) – Likelihood of Confusion Refusal

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 1732425. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

The registered mark is NORWICH for: “aspirin.” The applied-for mark is NORWICH for: “manufacturing services for others in the field of pharmaceuticals” and “pharmaceutical research services.”

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

Comparison of the Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

The marks are identical.

If the marks of the respective parties are identical, the relationship between the goods and/or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *Amcor, Inc. v. Amcor Indus., Inc.*, 210 USPQ 70, 78 (TTAB 1981); TMEP §1207.01(a).

Relatedness of the Goods and Services

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods and services as those of applicant and

registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods and services listed therein, namely pharmaceutical products and research and manufacturing of pharmaceuticals, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp. of Dallas*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Conclusion

Given the similarity of the marks and the goods and services, prospective consumers are likely to confuse the source of the goods and services specified in the application and registration. Accordingly, registration of the applied-for mark is refused under Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

Comments

If applicant has questions about its application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/April K. Roach/
Trademark Examining Attorney
Law Office 115
Phone: (571) 272-1092

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Print: Mar 2, 2010

74229096

TYPED DRAWING

Serial Number

74229096

Status

REGISTERED AND RENEWED

Word Mark

NORWICH

Standard Character Mark

No

Registration Number

1732425

Date Registered

1992/11/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

MONTICELLO DRUG COMPANY, THE CORPORATION FLORIDA 1604 STOCKTON STREET
JACKSONVILLE FLORIDA 32204

Goods/Services

Class Status -- ACTIVE. IC 005. US 018. G & S: aspirin. First
Use: 1927/04/12. First Use In Commerce: 1927/00/00.

Section 2f Statement

2(F) ENTIRE MARK

Filing Date

1991/12/04

Examining Attorney

COFIELD, JULIA HARDY

Attorney of Record

DAVID J. HILL

Print: Mar 2, 2010

77047143

DESIGN MARK

Serial Number

77047143

Status

REGISTERED

Word Mark

HCM HYALURON CONTRACT MANUFACTURING

Standard Character Mark

No

Registration Number

3497634

Date Registered

2008/09/09

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Hyaluron, Inc. CORPORATION MASSACHUSETTS Suite 2 99 South Bedford
Street Burlington MASSACHUSETTS 01803

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Biomedical preparations containing hyaluronic acid, hyaluronate
oligosaccharides, and bulk hyaluronate for use in the treatment of
osteoarthritis, eye surgery, and cancer. First Use: 2005/06/07.
First Use In Commerce: 2005/06/07.

Goods/Services

Class Status -- ACTIVE. IC 040. US 100 103 106. G & S: Contract
manufacturing in the field of pharmaceuticals and biopharmaceuticals;
contract manufacturing in the field of aseptically filled liquid
parenteral vials, syringes, medical vials, and containers; assembling
of product for others, namely, filling of vials, syringes, and custom
containers for others in the field of pharmaceutical products of
liquid, semi-solid, or solid kind. First Use: 2005/06/07. First Use
In Commerce: 2005/06/07.

Disclaimer Statement

Print: Mar 2, 2010

77047143

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CONTRACT MANUFACTURING" APART FROM THE MARK AS SHOWN.

Description of Mark

The color blue appears in the design and wording "HCM" and "CONTRACT MANUFACTURING" of the mark; the color purple appears in the wording "HYALURON" of the mark.

Colors Claimed

The color(s) blue and purple is/are claimed as a feature of the mark.

Filing Date

2006/11/17

Examining Attorney

HAN, DAWN

Attorney of Record

J. Mark Dickison



Print: Mar 2, 2010

77977348

DESIGN MARK

Serial Number

77977348

Status

REGISTERED

Word Mark

JHP PHARMACEUTICALS

Standard Character Mark

Yes

Registration Number

3670912

Date Registered

2009/08/18

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

JHP Pharmaceuticals, LLC LIMITED LIABILITY COMPANY DELAWARE Building
D, 3rd Floor One Upper Pond Road Parsippany NEW JERSEY 07054

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Injectable pharmaceuticals for the diagnosis and treatment of
myxedema, coma, precoma, diabetes, surgical shock, viral and
infectious diseases, cancer, and blood pressure; anti-emetics; adrenal
hormone preparations; antibiotics; tuberculin; general anesthetics;
anti-bacterial pharmaceuticals; estrogenic preparations; oxytocics;
anti-infective pharmaceuticals; and diagnostic preparations for
medical purposes. First Use: 2007/12/10. First Use In Commerce:
2007/12/10.

Goods/Services

Class Status -- ACTIVE. IC 040. US 100 103 106. G & S:
Manufacturing services for others in the fields of pharmaceuticals and
biopharmaceuticals. First Use: 2007/10/01. First Use In Commerce:
2007/10/01.

Disclaimer Statement

Print: Mar 2, 2010

77977348

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PHARMACEUTICALS" APART
FROM THE MARK AS SHOWN.

Filing Date

2007/11/29

Examining Attorney

CARROLL, DORITT L.

Attorney of Record

David M. Perry

JHP PHARMACEUTICALS

Print: Mar 2, 2010

78093836

DESIGN MARK

Serial Number
78093836

Status
SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Registration Number
2700385

Date Registered
2003/03/25

Type of Mark
TRADEMARK; SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(2) DESIGN ONLY

Owner
Salix Pharmaceuticals, Inc. CORPORATION CALIFORNIA 1700 Perimeter Park
Drive Morrisville NORTH CAROLINA 27560

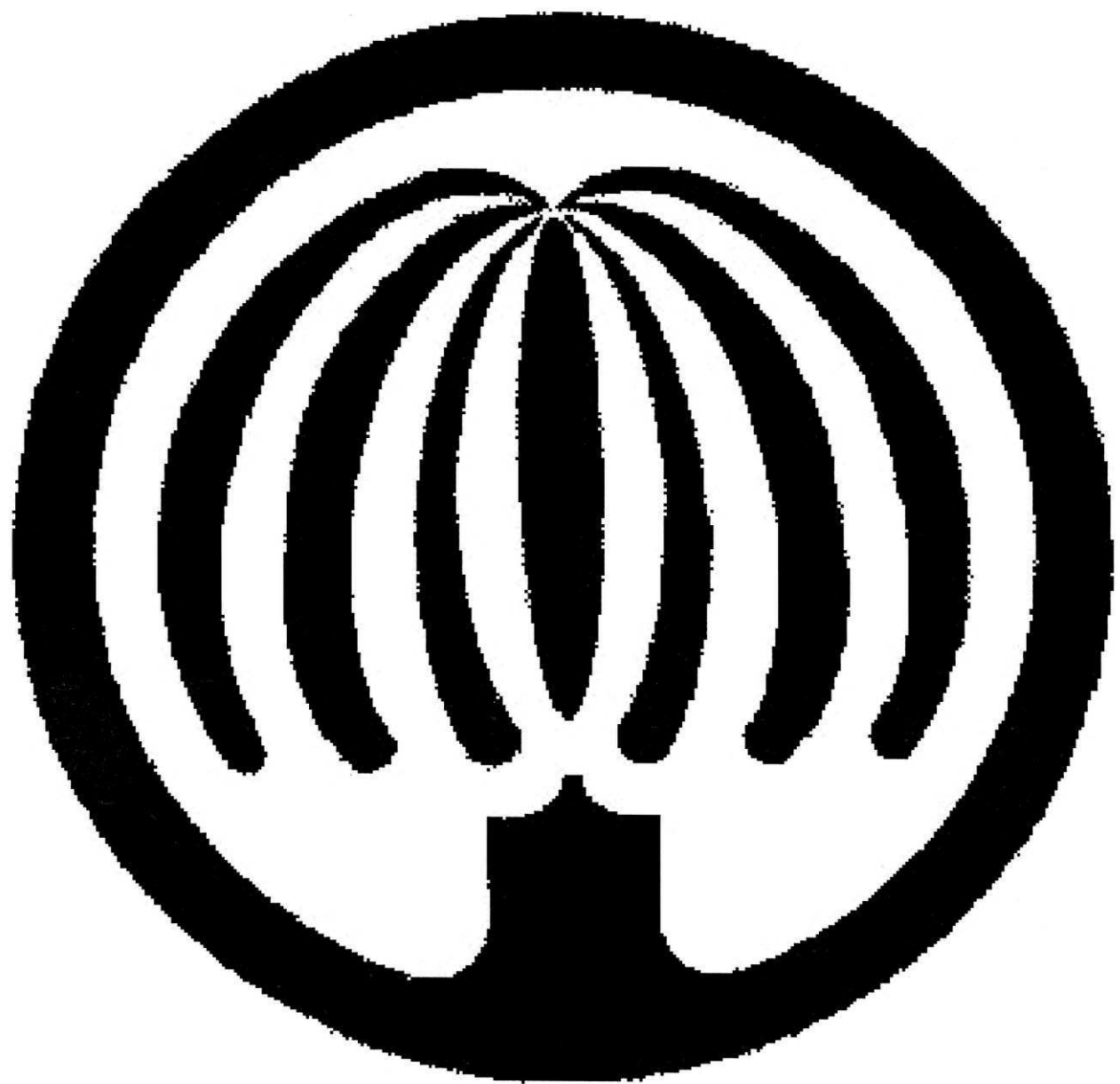
Goods/Services
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Pharmaceutical preparations and substances for the treatment and/or
alleviation of gastrointestinal diseases and conditions. First Use:
2000/12/11. First Use In Commerce: 2000/12/11.

Goods/Services
Class Status -- ACTIVE. IC 042. US 100 101. G & S: Research and
development services for pharmaceutical preparations and substances;
disease management services in the nature of providing patients and
health care providers with information on managing the care of
patients with specific diseases and on treatments for specific
diseases; providing health and pharmaceutical information services;
and health and pharmaceutical consulting services. First Use:
1989/04/01. First Use In Commerce: 1989/04/01.

Filing Date
2001/11/16

Examining Attorney
GARTNER, JOHN

Attorney of Record
Maury M. Tepper, III



Print: Mar 2, 2010

78363217

DESIGN MARK

Serial Number

78363217

Status

REGISTERED

Word Mark

BARRIER THERAPEUTICS

Standard Character Mark

Yes

Registration Number

3098956

Date Registered

2006/05/30

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

STIEFEL LABORATORIES, INC. CORPORATION DELAWARE 2711 Centerville Road
Suite 400 Corporation Service Company Wilmington DELAWARE 19801

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Prescription dermatological pharmaceuticals and preparations. First
Use: 2004/08/01. First Use In Commerce: 2005/08/01.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Research,
development and consultation in the field of prescription
dermatological pharmaceuticals and preparations. First Use:
2004/08/01. First Use In Commerce: 2005/08/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "THERAPEUTICS" APART
FROM THE MARK AS SHOWN.

Filing Date

2004/02/05

Print: Mar 2, 2010

78363217

Examining Attorney
FAIRBANKS, RON

Attorney of Record
Maribeth Day Case

BARRIER THERAPEUTICS

Print: Mar 2, 2010

78415059

DESIGN MARK

Serial Number
78415059

Status
REGISTERED

Word Mark
TCT

Standard Character Mark
No

Registration Number
3133887

Date Registered
2006/08/22

Type of Mark
TRADEMARK; SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner
Kiel Laboratories, Inc. CORPORATION GEORGIA 1233 Palmour Drive
Gainesville GEORGIA 30501

Goods/Services
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
FULL LINE OF PHARMACEUTICALS. First Use: 2005/06/08. First Use In
Commerce: 2005/06/08.

Goods/Services
Class Status -- ACTIVE. IC 040. US 100 103 106. G & S:
MANUFACTURING PHARMACEUTICALS TO THE ORDER AND SPECIFICATION OF
OTHERS. First Use: 2004/06/00. First Use In Commerce: 2004/06/00.

Description of Mark
The mark consists of the interlocking stylized lettering TCT.

Filing Date
2004/05/07

Examining Attorney
BLOHM, LINDA E.

Print: Mar 2, 2010

78415059

Attorney of Record
Andrew D. Dorisio



Print: Mar 2, 2010

78450189

DESIGN MARK

Serial Number
78450189

Status
REGISTERED

Word Mark
NOLTERPHARMA

Standard Character Mark
Yes

Registration Number
3613803

Date Registered
2009/04/28

Type of Mark
TRADEMARK; SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
ZODIAC INTERNATIONAL CORPORATION CORPORATION PANAMA Floor 12, Suite
1201 Juncal 1305 Montevideo URUGUAY

Goods/Services
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Pharmaceutical and medicinal products and substances for human use,
namely, pharmaceutical and medicinal preparations for the prevention
and/or treatment of arthritis; nutritional disorders; autoimmune
diseases; disorders of the nervous system, the immune system, the
cardio-vascular system, the respiratory system, the musculoskeletal
system, the genitourinary system; for the treatment of inflammatory
disorders; for use in dermatology, in oncology, and in ophthalmology;
for use in the gastroenterological area; for the prevention and
treatment of ocular disorders or diseases; and antibacterials,
antivirals, antibiotics, and antifungals for the treatment of viral
and bacterial infections. First Use: 2005/04/11. First Use In
Commerce: 2005/04/11.

Goods/Services
Class Status -- ACTIVE. IC 042. US 100 101. G & S: Scientific
research and analysis services for further application in the medical

Print: Mar 2, 2010

78450189

and pharmaceutical fields. First Use: 2005/04/11. First Use In
Commerce: 2005/04/11.

Filing Date

2004/07/13

Examining Attorney

MIZELLE, DEZMONA

Attorney of Record

Arturo Perez-Guerrero

NOLTERPHARMA

Print: Mar 2, 2010

78729920

DESIGN MARK

Serial Number

78729920

Status

REGISTERED

Word Mark

SEATTLE GENETICS

Standard Character Mark

Yes

Registration Number

3212578

Date Registered

2007/02/27

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Seattle Genetics, Inc. CORPORATION DELAWARE 21823 - 30th Drive S.E.
Bothell WASHINGTON 98021

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
pharmaceutical preparations for the treatment of cancer and
immunological diseases. First Use: 1997/11/00. First Use In
Commerce: 1998/01/00.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: biotechnology
research, namely pharmaceutical product research and development of
drug therapy for the treatment of cancer and immunological diseases.
First Use: 1997/11/00. First Use In Commerce: 1998/01/00.

Section 2f Statement

2(F) ENTIRE MARK

Filing Date

2005/10/10

Print: Mar 2, 2010

78729920

Examining Attorney

PIGNATELLO, ELIZABETH

Attorney of Record

John C. Baum, Esq.

SEATTLE GENETICS

Print: Mar 2, 2010

78759139

DESIGN MARK

Serial Number

78759139

Status

REGISTERED

Word Mark

SHASUN

Standard Character Mark

Yes

Registration Number

3659406

Date Registered

2009/07/21

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Shasun Chemical and Drugs Limited CORPORATION INDIA Shasun House, 3
Doraiswamy Road T. Nagar, Chennai-600017 Tamil Nadu INDIA

Goods/Services

Class Status -- ACTIVE. IC 001. US 001 005 006 010 026 046. G & S:
Chemical additives for use in the manufacture of pharmaceuticals.
First Use: 2002/08/08. First Use In Commerce: 2002/08/08.

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Full line of pharmaceutical preparations. First Use: 1989/12/04.
First Use In Commerce: 1989/12/04.

Goods/Services

Class Status -- ACTIVE. IC 040. US 100 103 106. G & S: Contract
manufacturing in the field of pharmaceutical and chemicals. First
Use: 2002/08/08. First Use In Commerce: 2002/08/08.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Contract
pharmaceutical and chemical research services. First Use: 2002/08/08.

Print: Mar 2, 2010

78759139

First Use In Commerce: 2002/08/08.

Filing Date

2005/11/22

Examining Attorney

DWYER, JOHN

Attorney of Record

NANCY KENNEDY

SHASUN

Print: Mar 2, 2010

78787892

DESIGN MARK

Serial Number

78787892

Status

REGISTERED

Word Mark

SAFC SUPPLY SOLUTIONS

Standard Character Mark

Yes

Registration Number

3257144

Date Registered

2007/06/26

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Sigma-Aldrich Biotechnology L.P. LIMITED PARTNERSHIP MISSOURI 3050
Spruce Street St. Louis MISSOURI 63103

Goods/Services

Class Status -- ACTIVE. IC 001. US 001 005 006 010 026 046. G & S:
Full line of chemicals for manufacturing, research and scientific use.
First Use: 2006/02/01. First Use In Commerce: 2006/02/01.

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Full line of pharmaceutical preparations for in vitro pharmaceutical
diagnostic preparations for medical use; a full line of diagnostic and
therapeutic preparations and substances for in vivo use; a full line
of compounds, namely vitamin and mineral preparations for use as
ingredients in pharmaceutical preparations. First Use: 2006/02/01.
First Use In Commerce: 2006/02/01.

Goods/Services

Class Status -- ACTIVE. IC 040. US 100 103 106. G & S: Custom
manufacture for others of chemicals for use in manufacture, research
and science; custom manufacture for others of compounds for use in

Print: Mar 2, 2010

78787892

pharmaceuticals. First Use: 2006/02/01. First Use In Commerce: 2006/02/01.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Chemical and scientific research for others; development for others of chemicals, compounds and ingredients for use in manufacture, pharmaceuticals, research and for scientific purposes. First Use: 2006/02/01. First Use In Commerce: 2006/02/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SUPPLY SOLUTIONS" APART FROM THE MARK AS SHOWN.

Filing Date

2006/01/09

Examining Attorney

VOHRA, SANJEEV

Attorney of Record

Dermot Horgan

SAFC SUPPLY SOLUTIONS

Print: Mar 2, 2010

78800790

DESIGN MARK

Serial Number

78800790

Status

REGISTERED

Word Mark

ABRAXIS BIOSCIENCE

Standard Character Mark

Yes

Registration Number

3747838

Date Registered

2010/02/09

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

ABRAXIS BIOSCIENCE, LLC LIMITED LIABILITY COMPANY DELAWARE 20th FLOOR
11755 WILSHIRE BLVD. LOS ANGELES CALIFORNIA 90025

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S: Pharmaceuticals, namely, oncolytics; pharmaceuticals for the treatment of cancer; pharmaceuticals to treat vascular diseases; drug delivery system composed of nanoparticles sold as an integral component of drugs. First Use: 2006/00/00. First Use In Commerce: 2008/03/00.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Research and development in the field of pharmaceuticals and drug delivery. First Use: 2006/00/00. First Use In Commerce: 2006/00/00.

Goods/Services

Class Status -- ACTIVE. IC 044. US 100 101. G & S: Medical information services. First Use: 2006/00/00. First Use In Commerce: 2006/00/00.

Prior Registration(s)

Print: Mar 2, 2010

78800790

3077449;3088534

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BIOSCIENCE" APART FROM
THE MARK AS SHOWN.

Filing Date

2006/01/27

Examining Attorney

GAST, PAUL FRANCIS

Attorney of Record

Lynn A. Sullivan

ABRAXIS BIOSCIENCE

Print: Mar 2, 2010

78811907

DESIGN MARK

Serial Number

78811907

Status

REGISTERED

Word Mark

UNIQUE DELIVERY, PROVEN RESULTS

Standard Character Mark

Yes

Registration Number

3399830

Date Registered

2008/03/18

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Somerset Pharmaceuticals, Inc. CORPORATION DELAWARE 2202 North West
Shore Boulevard #450 Tampa FLORIDA 33607

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Pharmaceutical preparations for the treatment of depression, and other
neurological and/or mental conditions or diseases, administered
through a transdermal patch. First Use: 2006/04/01. First Use In
Commerce: 2006/04/01.

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.
G & S: Printed matter, namely, promotional materials, informational
materials, brochures, pamphlets, newsletters and stationery relating
to pharmaceuticals and the treatment and prevention of diseases.
First Use: 2006/04/01. First Use In Commerce: 2006/04/01.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Pharmaceutical
research and development services. First Use: 2006/04/01. First Use
In Commerce: 2006/04/01.

Print: Mar 2, 2010

78811907

Filing Date

2006/02/10

Examining Attorney

COLLIER, DAVID

Attorney of Record

Tanya Fickenscher Leonard

UNIQUE DELIVERY, PROVEN RESULTS

Print: Mar 2, 2010

78827556

DESIGN MARK

Serial Number
78827556

Status
REGISTERED

Word Mark
BIONOVO

Standard Character Mark
Yes

Registration Number
3274673

Date Registered
2007/08/07

Type of Mark
TRADEMARK; SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Bionovo, Inc. CORPORATION CALIFORNIA 5858 Horton Street, Suite 375
Emeryville CALIFORNIA 94608

Goods/Services
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Pharmaceutical preparations for women's health, namely for treating
menopause and its symptoms; pharmaceutical preparations for cancer
treatment. First Use: 2006/01/01. First Use In Commerce: 2006/01/01.

Goods/Services
Class Status -- ACTIVE. IC 042. US 100 101. G & S: Pharmaceutical
research and development. First Use: 2002/03/01. First Use In
Commerce: 2002/03/01.

Filing Date
2006/03/02

Examining Attorney
KELLY, JOHN

Attorney of Record

Print: Mar 2, 2010

78827556

G. Roxanne Elings

BIONOVO

Print: Mar 2, 2010

78890377

DESIGN MARK

Serial Number

78890377

Status

REGISTERED

Word Mark

TETRALOGIC PHARMACEUTICALS

Standard Character Mark

Yes

Registration Number

3332639

Date Registered

2007/11/06

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Tetralogic Pharmaceuticals Corporation CORPORATION DELAWARE 343
Phoenixville Pike Malvern PENNSYLVANIA 19335

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Pharmaceutical and biologic preparations for use as therapeutic agents
for the treatment of cancer. First Use: 2006/02/08. First Use In
Commerce: 2006/03/07.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Pharmaceutical
and biologic research and development in the areas of diagnostic and
prognostic methods and reagents, preventive medicine, and therapeutic
agents. First Use: 2006/02/08. First Use In Commerce: 2006/03/07.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PHARMACEUTICALS" APART
FROM THE MARK AS SHOWN.

Filing Date

2006/05/23

Print: Mar 2, 2010

78890377

Examining Attorney
LEWIS, MICHAEL

Attorney of Record
Paul J. Kennedy

TETRALOGIC PHARMACEUTICALS

Bayer HealthCare Pharmaceuticals

UNITED STATES



Bayer HealthCare

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A Targeted Approach to HealthCare

Bayer HealthCare Pharmaceuticals' goal is to discover products that will improve human health worldwide by diagnosing, preventing and treating diseases. As a specialty pharmaceutical company, we focus our efforts where we can have the most impact.

For more than 100 years, Bayer has been dedicated to developing, manufacturing and marketing pharmaceuticals. Built on the company's long history of providing medicines that healthcare providers and patients can trust, Bayer is one of the most recognized brands in health care.

Bayer News Releases

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[NATIONAL SURVEY REVEALS PEOPLE WITH MULTIPLE SCLEROSIS ARE](#)

Further Information

[Important Ciprodil Safety Information](#)
[Information for US Healthcare Professionals and Patients](#)

[Medication Guide for Patients](#)

[Updated Ciprodil tablet and oral suspension prescribing information](#)

[Updated Ciprodil intravenous Prescribing Information](#)

[Dear Healthcare Professional Letter](#)

[Important Avelox® Safety](#)

NATURAL SURVEY REVEALS PEOPLE WITH MULTIPLE SCLEROSIS ARE CONCERNED ABOUT DISEASE'S IMPACT ON RELATIONSHIPS AND CAREERS [more](#)

30 November 2009 - Bayer News Releases.....
Bayer HealthCare Pharmaceuticals Inc. Initiates Phase III Trial with Florbetaben PET Tracer for Imaging of Cerebral beta-Amyloid Plaques, a Pathological Hallmark of Alzheimer's Disease [more](#)

1 October 2009 - Bayer News Releases.....
FDA Approves New Indication for Mirena(R) [more](#)

7 August 2009 - Bayer News Releases.....
FDA Approves New 3000 IU Vial Size for Kogenate® FS, antihemophilic factor (recombinant) [more](#)

9 July 2009 - Bayer News Releases.....
Bayer HealthCare Launches Hemophilia Self-Infusion Training Program [more](#)

30 May 2009 - Bayer News Releases.....
Bayer Announces New Data on Novel Anti-cancer Compound BAY 73-4506 [more](#)

29 May 2009 - Bayer News Releases.....
Bayer Announces Leukine® Data Presentations at 45th American Society of Clinical Oncology (ASCO) Annual Meeting [more](#)

28 May 2009 - Bayer News Releases.....
Phase 3 Trial Initiated to Evaluate Combination Therapy of Nexavar(R) and Tarceva(R) [more](#)

29 April 2009 - Bayer News Releases.....
New Analyses from 16-Year Follow-Up Trial with Betaseron(R) [more](#)

2 December 2008 - Bayer News Releases.....
JENNIE FINCH SHARES HOW TO FIRE UP THE ROMANCE DESPITE THE DEMANDS OF THE HOLIDAYS [more](#)

27 October 2008 - Bayer News Releases.....
Bayer HealthCare New Sterile Fill Facility Receives EMEA, FDA Licenses [more](#)

22 October 2008 - Bayer News Releases.....
Study Results: Alemtuzumab [more](#)

Information for US Healthcare Professionals and Patients

[Medication Guide for Tysabri](#)

[Updated Avastin Prescribing Information](#)

[Dear Healthcare Professional Letter](#)

Important Tysabri® Safety Information

[New - Important Information for Health Professionals](#)

Clinical Trials

Information about clinical studies is available in the [Bayer HealthCare database](#) as well as at [clinicaltrials.gov](#) and [clinicalstudyresults.org](#)

Bayer Reports Findings of Tysabri Independent Investigation

[Press Statement](#)
[Investigator Report](#)
[Key Committee - Bayer Global Drug Safety](#)

[Press Release Archive](#)

To: Alvogen IP Co S.a.r.l. (trademarkadmin@ldlkm.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77879560 - NORWICH -
ALVOGE 10.0-
Sent: 3/2/2010 10:51:44 AM
Sent As: ECOM115@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 77879560) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office ("USPTO") has written a letter (an "Office action") on 3/2/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. Read the Office letter by clicking on this [link](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77879560&doc_type=OOA&)
http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77879560&doc_type=OOA&
OR go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 3/2/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) (loss) of your application.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77879560
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION (no change)	
ARGUMENT(S)	

RESPONSE

This is in response to the Official Action dated March 2, 2010.

REMARKS

The Examining Attorney has refused registration of the applied-for mark ("Applicant's mark") due to likelihood of confusion with U.S. Registration No. 1732425 ("the Registered mark"). Applicant respectfully offers the following arguments in support of registration.

I. Introduction

Applicant's mark is for two highly specialized pharmaceutical services: "manufacturing services for others in the field of pharmaceuticals" and "pharmaceutical research services."

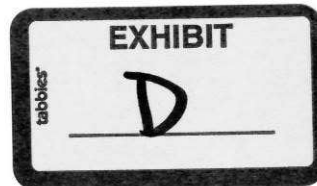
The Registered mark, on the other hand, is for a common over-the-counter good: "aspirin."

While both the Applicant and the Registrant can be said to do business within the pharmaceutical industry, that is where the similarities end. The Applicant respectfully asserts that the products and services in question, their channels of trade, and their prospective consumers are so distinct as to obviate virtually any concern as to potential confusion.

II. Argument

As an initial matter, it bears repeating that there are no *per se* rules relating to likelihood of confusion, and each case must be decided based on its own facts and circumstances. See TMEP § 1207.01(a)(iv).

Accordingly, while the Applicant's and Registrant's marks are identical, that is not where the inquiry



ends. "[I]f the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely." TMEP § 1207.01(a)(i).

A. Differences Between Registrant's Goods and Applicant's Services

It goes without saying that aspirin is a household item and that those who ultimately consume it are individuals. The common consumer of aspirin may purchase it over-the-counter in nearly any pharmacy, grocery, or convenience store across the country. Aspirin is routinely taken for relief of a wide range of conditions including headaches, muscle pains, arthritis, fevers, colds, and even toothaches. In addition, aspirin is widely prescribed for daily use by older adults, who thus take it with their regular vitamins. Though it is impossible to know exactly how many aspirin tablets are consumed yearly (some estimates have placed worldwide consumption at 120 billion tablets), it is clear that aspirin has become a staple good.

As a result, prospective purchasers can be expected to approach aspirin much as they do bread or milk, paying primary attention to the price and quantity, and with minimal concern for the brand or manufacturer. Moreover, while many branded pharmaceuticals are manufactured by unaffiliated companies (e.g., Bayer may contract to have another company manufacture its Bayer® aspirin), the vast majority of aspirin purchasers – who routinely discard all packaging and pamphlets and store only the bottle in their medicine cabinet – will be completely unaware of the actual manufacturer of their tablets.

In short, aspirin has become so ubiquitous that the average person feels comfortable purchasing and consuming it with very little if any inspection.

In stark contrast, the Applicant provides pharmaceutical manufacturing and research services exclusively to other businesses in the pharmaceutical industry. Applicant's services are not commodities, but rather specialized services, and thus cannot be put up for sale alongside other products as aspirin may be placed on a shelf next to other goods. Applicant's services are likewise not purchased, but rather contracted for, and thus prospective consumers are typically forced to consult business people, medical professionals, and attorneys before entering into any such agreement.

Accordingly, a prospective purchaser of the Applicant's services will be inherently sophisticated, informed, and familiar with the pharmaceutical industry. In addition, both by virtue of the expense of the Applicant's services and the fact that those services are also provided to other businesses in the

pharmaceutical industry, any prospective consumer will also be financially motivated to learn everything it can about the Applicant, its related corporate entities, and any goods or services it provides to potential competitors. In short, any business contracting for the Applicant's services will do so only after having performed an extensive review and having obtained the approval of multiple people.

B. Differences Between The Channels of Trade

As already mentioned, Applicant's services are not "purchased" in the usual sense of the word, but rather contracted for. Likewise, there is no "channel of trade" for the Applicant's services as that term would normally be understood. Businesses that are searching for pharmaceutical manufacturing or research services cannot walk down an aisle and compare different providers. A prospective consumer of the Applicant's services must be sufficiently acquainted with the industry to know of the Applicant and its competitors, and generally must have business contacts at those companies with whom they can communicate to obtain preliminary quotes and begin negotiations.

The Registrant's goods, on the other hand, are readily available to average consumers in stores across the nation. Unlike the Applicant's services, aspirin is routinely found in aisles along with other pain medications, ointments, bandages and related goods, and within stores which sell numerous unrelated items such as food, clothing, and even gasoline. Notably, however, the Registrant's goods are never offered for sale alongside pharmaceutical manufacturing or research services. Thus, while it is possible to buy both aspirin and a prepaid cell phone in the same store, it is impossible to pick up the Registrant's goods and then wander to the next aisle (or even a neighboring store) to select one of the Applicant's services. Put simply, the Registrant's goods and the Applicant's services travel in completely distinct channels of trade.

C. Differences Between The Prospective Consumers

While aspirin is consumed by individuals, pharmaceutical manufacturing and research services are only provided to business entities. Thus, in almost every case, there will be absolutely no commonality between the prospective consumers of the Registrant's goods and the Applicant's services. While it is conceivable that a wholesaler or retailer may buy Registrant's aspirin in bulk, it is highly unlikely that such a business would have any knowledge of or use for the Applicant's services, which are normally consumed by companies involved in developing and providing pharmaceuticals to the rest of the industry. Likewise, though there may be individuals who by virtue of their work in the pharmaceutical

field are aware of both Norwich brand aspirin and the specialized pharmaceutical services provided by the Applicant, that select group of sophisticated individuals can likewise be expected to know the differences between the sources of the Registrant's goods and the Applicant's services. Thus, to the very limited extent that a person or business may be aware that the Applicant even provides services under the Norwich mark, they will by definition be so familiar with the industry that any likelihood of confusion will be exceedingly small.

This latter point applies equally to the registrations identified by the Examining Attorney at Attachments 1 through 41. At most, the average consumers of aspirin familiar with companies such as Bayer may implicitly assume that the maker of Norwich brand aspirin (the Registrant) also provides one or more pharmaceutical services under the same name. However, as the average consumer of aspirin is not a prospective consumer of specialized pharmaceutical services, there is no risk that such a person will thus proceed to incorrectly purchase the Applicant's services thinking that they are purchasing those of the Registrant. Likewise, as the Applicant's services are only offered to a very sophisticated group of businesses in the pharmaceutical industry, there is also very little chance that the limited number of consumers aware of the Applicant's services would not also know of the Registrant's goods and the correct sources of each.

III. Conclusion

Applicant asserts that in the vast majority of cases, a prospective purchaser of aspirin will be entirely unaware that the Applicant provides pharmaceutical manufacturing and research services in the first place, thus eliminating the potential for any confusion as to the source of the Registrant's goods.

Applicant further asserts that any business planning to contract for Applicant's highly specialized pharmaceutical manufacturing or research services will have sufficient knowledge, incentive, and opportunity to obtain complete clarity as to the differences between the Registrant and the Applicant and their respective goods and services. As such, Applicant respectfully asserts that, notwithstanding any similarity in industry, there are such significant differences between the goods and services in question, the manner in which they are routinely purchased, the channels of trade in which they are sold, and the levels of sophistication of the prospective purchasers of each, that there is virtually no likelihood of confusion between the Registrant's goods and the Applicant's services.

In view of the foregoing, it is respectfully submitted that the potential refusal of registration under Section 2(d) should be withdrawn. Notice to this effect is earnestly solicited.

No fee is deemed necessary for this response. However, if the Examining Attorney believes a fee is appropriate, she is authorized to charge Deposit Account No. 12â€‘1095.

If the Examining Attorney has any questions concerning this matter, she is encouraged to contact Applicant's counsel by telephone.

SIGNATURE SECTION

RESPONSE SIGNATURE	/ROBERT B. HANDER/
SIGNATORY'S NAME	ROBERT B. HANDER
SIGNATORY'S POSITION	ATTORNEY OF RECORD, NJ BAR MEMBER
DATE SIGNED	08/30/2010
AUTHORIZED SIGNATORY	YES

FILING INFORMATION SECTION

SUBMIT DATE	Mon Aug 30 11:49:11 EDT 2010
TEAS STAMP	USPTO/ROA-207.99.9.1-2010 0830114911369754-77879560 -470f2e7712bf9d9ce9fb6c8b 32b9abfe46-N/A-N/A-201008 30114533129366

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action To the Commissioner for Trademarks:

Application serial no. **77879560** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

RESPONSE

This is in response to the Official Action dated March 2, 2010.

REMARKS

The Examining Attorney has refused registration of the applied-for mark ("Applicant's mark") due to likelihood of confusion with U.S. Registration No. 1732425 ("the Registered mark"). Applicant

respectfully offers the following arguments in support of registration.

I. Introduction

Applicant's mark is for two highly specialized pharmaceutical services: "manufacturing services for others in the field of pharmaceuticals" and "pharmaceutical research services."

The Registered mark, on the other hand, is for a common over-the-counter good: "aspirin."

While both the Applicant and the Registrant can be said to do business within the pharmaceutical industry, that is where the similarities end. The Applicant respectfully asserts that the products and services in question, their channels of trade, and their prospective consumers are so distinct as to obviate virtually any concern as to potential confusion.

II. Argument

As an initial matter, it bears repeating that there are no *per se* rules relating to likelihood of confusion, and each case must be decided based on its own facts and circumstances. *See* TMEP § 1207.01(a)(iv).

Accordingly, while the Applicant's and Registrant's marks are identical, that is not where the inquiry ends.

"[I]f the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely." TMEP § 1207.01(a)(i).

A. Differences Between Registrant's Goods and Applicant's Services

It goes without saying that aspirin is a household item and that those who ultimately consume it are individuals. The common consumer of aspirin may purchase it over-the-counter in nearly any pharmacy, grocery, or convenience store across the country. Aspirin is routinely taken for relief of a wide range of conditions including headaches, muscle pains, arthritis, fevers, colds, and even toothaches. In addition, aspirin is widely prescribed for daily use by older adults, who thus take it with their regular vitamins. Though it is impossible to know exactly how many aspirin tablets are consumed yearly (some estimates have placed worldwide consumption at 120 billion tablets), it is clear that aspirin has become a staple good.

As a result, prospective purchasers can be expected to approach aspirin much as they do bread or milk, paying primary attention to the price and quantity, and with minimal concern for the brand or

manufacturer. Moreover, while many branded pharmaceuticals are manufactured by unaffiliated companies (e.g., Bayer may contract to have another company manufacture its Bayer® aspirin), the vast majority of aspirin purchasers – who routinely discard all packaging and pamphlets and store only the bottle in their medicine cabinet – will be completely unaware of the actual manufacturer of their tablets. In short, aspirin has become so ubiquitous that the average person feels comfortable purchasing and consuming it with very little if any inspection.

In stark contrast, the Applicant provides pharmaceutical manufacturing and research services exclusively to other businesses in the pharmaceutical industry. Applicant's services are not commodities, but rather specialized services, and thus cannot be put up for sale alongside other products as aspirin may be placed on a shelf next to other goods. Applicant's services are likewise not purchased, but rather contracted for, and thus prospective consumers are typically forced to consult business people, medical professionals, and attorneys before entering into any such agreement.

Accordingly, a prospective purchaser of the Applicant's services will be inherently sophisticated, informed, and familiar with the pharmaceutical industry. In addition, both by virtue of the expense of the Applicant's services and the fact that those services are also provided to other businesses in the pharmaceutical industry, any prospective consumer will also be financially motivated to learn everything it can about the Applicant, its related corporate entities, and any goods or services it provides to potential competitors. In short, any business contracting for the Applicant's services will do so only after having performed an extensive review and having obtained the approval of multiple people.

B. Differences Between The Channels of Trade

As already mentioned, Applicant's services are not "purchased" in the usual sense of the word, but rather contracted for. Likewise, there is no "channel of trade" for the Applicant's services as that term would normally be understood. Businesses that are searching for pharmaceutical manufacturing or research services cannot walk down an aisle and compare different providers. A prospective consumer of the Applicant's services must be sufficiently acquainted with the industry to know of the Applicant and its competitors, and generally must have business contacts at those companies with whom they can communicate to obtain preliminary quotes and begin negotiations.

The Registrant's goods, on the other hand, are readily available to average consumers in stores across the nation. Unlike the Applicant's services, aspirin is routinely found in aisles along with other pain medications, ointments, bandages and related goods, and within stores which sell numerous unrelated

items such as food, clothing, and even gasoline. Notably, however, the Registrant's goods are never offered for sale alongside pharmaceutical manufacturing or research services. Thus, while it is possible to buy both aspirin and a prepaid cell phone in the same store, it is impossible to pick up the Registrant's goods and then wander to the next aisle (or even a neighboring store) to select one of the Applicant's services. Put simply, the Registrant's goods and the Applicant's services travel in completely distinct channels of trade.

C. Differences Between The Prospective Consumers

While aspirin is consumed by individuals, pharmaceutical manufacturing and research services are only provided to business entities. Thus, in almost every case, there will be absolutely no commonality between the prospective consumers of the Registrant's goods and the Applicant's services. While it is conceivable that a wholesaler or retailer may buy Registrant's aspirin in bulk, it is highly unlikely that such a business would have any knowledge of or use for the Applicant's services, which are normally consumed by companies involved in developing and providing pharmaceuticals to the rest of the industry. Likewise, though there may be individuals who by virtue of their work in the pharmaceutical field are aware of both Norwich brand aspirin and the specialized pharmaceutical services provided by the Applicant, that select group of sophisticated individuals can likewise be expected to know the differences between the sources of the Registrant's goods and the Applicant's services. Thus, to the very limited extent that a person or business may be aware that the Applicant even provides services under the Norwich mark, they will by definition be so familiar with the industry that any likelihood of confusion will be exceedingly small.

This latter point applies equally to the registrations identified by the Examining Attorney at Attachments 1 through 41. At most, the average consumers of aspirin familiar with companies such as Bayer may implicitly assume that the maker of Norwich brand aspirin (the Registrant) also provides one or more pharmaceutical services under the same name. However, as the average consumer of aspirin is not a prospective consumer of specialized pharmaceutical services, there is no risk that such a person will thus proceed to incorrectly purchase the Applicant's services thinking that they are purchasing those of the Registrant. Likewise, as the Applicant's services are only offered to a very sophisticated group of businesses in the pharmaceutical industry, there is also very little chance that the limited number of consumers aware of the Applicant's services would not also know of the Registrant's goods and the correct

sources of each.

III. Conclusion

Applicant asserts that in the vast majority of cases, a prospective purchaser of aspirin will be entirely unaware that the Applicant provides pharmaceutical manufacturing and research services in the first place, thus eliminating the potential for any confusion as to the source of the Registrant's goods. Applicant further asserts that any business planning to contract for Applicant's highly specialized pharmaceutical manufacturing or research services will have sufficient knowledge, incentive, and opportunity to obtain complete clarity as to the differences between the Registrant and the Applicant and their respective goods and services. As such, Applicant respectfully asserts that, notwithstanding any similarity in industry, there are such significant differences between the goods and services in question, the manner in which they are routinely purchased, the channels of trade in which they are sold, and the levels of sophistication of the prospective purchasers of each, that there is virtually no likelihood of confusion between the Registrant's goods and the Applicant's services.

In view of the foregoing, it is respectfully submitted that the potential refusal of registration under Section 2(d) should be withdrawn. Notice to this effect is earnestly solicited.

No fee is deemed necessary for this response. However, if the Examining Attorney believes a fee is appropriate, she is authorized to charge Deposit Account No. 12â€1095.

If the Examining Attorney has any questions concerning this matter, she is encouraged to contact Applicant's counsel by telephone.

SIGNATURE(S)

Response Signature

Signature: /ROBERT B. HANDER/ Date: 08/30/2010

Signatory's Name: ROBERT B. HANDER

Signatory's Position: ATTORNEY OF RECORD, NJ BAR MEMBER

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

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